

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN BURTON,

Plaintiff,

VS.

CRYSTAL BENSON and RENEE COOPER,

Defendants.

NO. CV-06-0273-JLQ

**ORDER DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL AND STRIKING
APPLICATIONS TO PROCEED IN
FORMA PAUPERIS, AMENDED
COMPLAINTS, AND MOTIONS
FOR SUMMARY JUDGMENT**

BEFORE THE COURT is Plaintiff's Motion for Assistance of Counsel, (Ct. Rec. 24); Plaintiff's second and third Applications to Proceed *In Forma Pauperis*, (Ct. Rec. 31 & 34); Plaintiff's Motion to File Second Amended Complaint, (Ct. Rec. 29), and Plaintiff's proposed Second Amended Complaint, (Ct. Rec. 30 & 33), and; Plaintiff's multiple Motions for Summary Judgment, (Ct. Rec. 26 & 35).

This court has discretion to designate counsel pursuant to 28 U.S.C. § 1915(e)(1) only under exceptional circumstances. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining whether exceptional circumstances exist requires evaluating "the likelihood of success on the merits and plaintiff's ability to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Id.* (citations omitted). Based upon the record before this court, the Plaintiff has demonstrated an adequate ability to proceed *pro se*. Moreover, Plaintiff has not presented exceptional circumstances which warrant the appointment of counsel to assist the Plaintiff at this time. Accordingly, Plaintiff's Motion for Assistance of Counsel is **DENIED**. (Ct. Rec. 24). No such further motion shall be filed without the prior permission of the court.

1 On September 19, 2006, the Plaintiff filed his first Application to Proceed *In*
2 *Forma Pauperis* and, by separate Order, the court granted the Plaintiff's application with
3 instructions to collect a filing fee pursuant to 28 U.S.C. § 1915(b)(1) & (2). Accordingly,
4 Plaintiff's subsequently filed Applications to Proceed *In Forma Pauperis* are hereby
5 **STRICKEN**. (Ct. Rec. 31 & 34).

6 On November 2, 2006, this court directed service of the Plaintiff's First Amended
7 Complaint providing Defendants with up to sixty (60) days to file an answer or otherwise
8 respond to Plaintiff's claims. In the meantime, Plaintiff has filed a Motion to File Second
9 Amended Complaint, (Ct. Rec. 29), with accompanying proposed Second Amended
10 Complaint, (Ct. Rec. 30) and a Second Amended Complaint, without the requisite
11 motion. (Ct. Rec. 33). As these Amended Complaints are not substantively different than
12 Plaintiff's First Amended Complaint, which this court ordered to be served upon the
13 Defendants, Plaintiff's Motion to File Second Amended Complaint is **DENIED** and his
14 Second Amended Complaint shall be **STRICKEN**.

15 Furthermore, in the November 2, 2006 Order Directing Service of First Amended
16 Complaint, this court clearly ordered the Plaintiff to "serve upon Defendants, or if
17 appearance has been entered by counsel, upon their attorney, a copy of every further
18 pleading or other document submitted for consideration by the court." The Plaintiff was
19 further instructed to "include, with the original paper to be filed with the District Court
20 Executive, a certificate stating the date a true and correct copy of any document was
21 mailed to the Defendants or to their counsel." The Plaintiff has failed to present such a
22 certificate of service for his motions for summary judgment. Accordingly, Plaintiff's
23 Motions for Summary Judgment are hereby **STRICKEN**. (Ct. Rec. 26 & 35). Plaintiff
24 shall not re-note his Motions For Summary Judgment prior to January 2, 2007 and shall
25 then be re-noted only after obtaining a hearing date from this court's Judicial Assistant,
26 Margaret Buckner.

Upon appearance of counsel for the Defendants, this court will set a Scheduling Conference hearing at which time, *inter alia*, the court will address the scheduling of hearing on Plaintiff's Motion For Summary Judgment.

The Plaintiff shall file no further pleadings in this matter prior to January 2, 2007, unless previously authorized by the court.

IT IS SO ORDERED. The Clerk of this court shall enter this Order and forward a copy to the Plaintiff and counsel for the Defendants if an appearance has been filed.

DATED this 30th day of November 2006.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE